

INFORMATION A

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South Carolina Code of Laws (unannotated) Current through the end of the 2003 Regular Session

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Title 9 - Retirement Systems

CHAPTER 16.

RETIREMENT SYSTEM FUNDS

ARTICLE 1.

DUTIES OF THE TRUSTEE, FIDUCIARIES, AGENTS

SECTION 9-16-10. Definitions.

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Assets" means all funds, investments, and similar property of the retirement system.

(2) "Beneficiary" means a person, other than the participant, who is designated by a participant or by a retirement program to receive a benefit under the program.

(3) "Board" means the State Budget and Control Board acting as trustee of the retirement system.

(4) "Fiduciary" means a person who:

(a) exercises any authority to invest or manage assets of a system;

(b) provides investment advice for a fee or other direct or indirect compensation with respect to assets of a system or has any authority or responsibility to do so; or

(c) is a member of the State Budget and Control Board when it acts as trustee for the retirement system.

(5) "Participant" means an individual who is or has been an employee enrolled in a retirement program and who is or may become eligible to receive or is currently receiving a benefit under the program. The term does not include an individual who is no longer an

employee of an employer as defined by laws governing the retirement system and who has withdrawn his contributions from the retirement system.

(6) "Panel" means the State Retirement Systems Investment Panel established pursuant to Section 9-16-310.

(7) "Retirement program" means a program of rights and obligations which a retirement system establishes or maintains and which, by its express terms or as a result of surrounding circumstances:

(a) provides retirement benefits to qualifying employees and beneficiaries; or

(b) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.

(8) "Retirement system" means the South Carolina Retirement System, Retirement System for Judges and Solicitors, Retirement System for Members of the General Assembly, and Police Officers Retirement System established pursuant to Chapters 1, 8, 9, and 11 of this title.

(9) "Trustee" means the State Budget and Control Board.

SECTION 9-16-20. Investment and management authority of trustee; determination of assets of system.

(A) All assets of a retirement system are held in trust. The trustee has the exclusive authority, subject to this chapter and Section 9-1-1310, to invest and manage those assets.

(B) If the retirement system invests in a security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1, et seq.), the assets of the system include the security, but not assets of the investment company.

SECTION 9-16-30. Delegation of duties by trustee; standard of care; liability; agent's duty and submission to jurisdiction.

(A) The trustee may delegate functions that a prudent trustee acting in a like capacity and familiar with those matters could properly delegate under the circumstances but final authority to invest cannot be delegated.

(B) The trustee shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

(2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the retirement program; and

(3) periodically reviewing the agent's performance and compliance with the terms of the delegation.

(C) In performing a delegated function, an agent owes a duty to the retirement system and to its participants and beneficiaries to comply with the terms of the delegation and, if a fiduciary, to comply with the duties imposed by Section 9-16-40.

(D) A trustee who complies with subsections (A) and (B) is not liable to the retirement system or to its participants or beneficiaries for the decisions or actions of the agent to whom the function was delegated.

(E) By accepting the delegation of a function from the trustee, an agent submits to the jurisdiction of the courts of this State.

(F) A trustee may limit the authority of an agent to delegate functions under this section.

SECTION 9-16-40. Discharge of duties by trustee; requirements.

A trustee or other fiduciary shall discharge duties with respect to a retirement system:

- (1) solely in the interest of the retirement systems, participants, and beneficiaries;
- (2) for the exclusive purpose of providing benefits to participants and beneficiaries and paying reasonable expenses of administering the system;
- (3) with the care, skill, and caution under the circumstances then prevailing which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
- (4) impartially, taking into account any differing interests of participants and beneficiaries;
- (5) incurring only costs that are appropriate and reasonable; and
- (6) in accordance with a good faith interpretation of this chapter.

SECTION 9-16-50. Investment and management considerations by trustee; diversification; verification of facts; statement of investment objectives and policies.

(A) In investing and managing assets of a retirement system pursuant to Section 9-16-40, the trustee:

- (1) shall consider among other circumstances:
 - (a) general economic conditions;

- (b) the possible effect of inflation or deflation;
 - (c) the role that each investment or course of action plays within the overall portfolio of the retirement system;
 - (d) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - (e) the adequacy of funding for the plan based on reasonable actuarial factors;
- (2) shall diversify the investments of the retirement system unless the trustee reasonably determines that, because of special circumstances, it is clearly prudent not to do so;
 - (3) shall make a reasonable effort to verify facts relevant to the investment and management of assets of a retirement system;
 - (4) may invest in any kind of property or type of investment consistent with this chapter and Section 9-1-1310;
 - (5) may consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.

(B) The trustee shall adopt a statement of investment objectives and policies for the retirement system. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset-allocation goals, guidelines for the delegation of authority, and information on the types of reports to be used to evaluate investment performance. At least annually, the trustee shall review the statement and change or reaffirm it. The relevant portion of this statement may constitute parts of the annual investment plan required pursuant to Section 9-16-330.

SECTION 9-16-60. Evaluation of fiduciary's compliance with law not to be hindsight; decision-making evaluated in context of whole portfolio.

(A) Compliance by the trustee or other fiduciary with Sections 9-16-30, 9-16-40, and 9-16-50 must be determined in light of the facts and circumstances existing at the time of the trustee's or fiduciary's decision or action and not by hindsight.

(B) The trustee's investment and management decisions must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the retirement system.

SECTION 9-16-70. Liability for breach of duty; insurance by retirement system or fiduciary; disclosure of terms and conditions.

(A) The trustee or other fiduciary who breaches a duty imposed by this chapter is personally liable to the retirement system for any losses resulting from the breach and any profits resulting from the breach or made by the trustee or other fiduciary through use of assets of the system by trustees or other fiduciary. The trustee or other fiduciary is subject to other equitable remedies as the court considers appropriate, including removal.

(B) An agreement that purports to limit the liability of a trustee or other fiduciary for a breach of duty under this chapter is void.

(C) The retirement system may insure a trustee, fiduciary, or itself against liability or losses occurring because of a breach of duty under this chapter.

(D) A trustee or other fiduciary may insure against personal liability or losses occurring because of a breach of duty under this chapter if the insurance is purchased or provided by the individual trustee or fiduciary, but a fiduciary who obtains insurance pursuant to this chapter must disclose all terms, conditions, and other information relating to the insurance policy to the retirement system.

SECTION 9-16-80. Board meetings in executive session; disclosure of deliberations; exemptions.

(A) Meetings by the board while acting as trustee of the retirement system or by its fiduciary agents to deliberate about, or make tentative or final decisions on, investments or other financial matters may be in executive session if disclosure of the deliberations or decisions would jeopardize the ability to implement a decision or to achieve investment objectives.

(B) A record of the board or of its fiduciary agents that discloses deliberations about, or a tentative or final decision on, investments or other financial matters is exempt from the disclosure requirements of Chapter 4 of Title 30, the Freedom of Information Act, to the extent and so long as its disclosure would jeopardize the ability to implement an investment decision or program or to achieve investment objectives.

SECTION 9-16-90. Quarterly and annual investment reports; contents.

(A) The trustees shall provide investment reports at least quarterly during the fiscal year to the panel, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and other appropriate officials and entities.

(B) In addition to the quarterly reports provided in subsection (A), the trustees shall provide an annual report to the panel, the Speaker of the House of Representatives, members of the House of Representatives or Senate, but only upon their request, the President Pro Tempore of the Senate, and other appropriate officials and entities of the investment status of the retirement systems. The report must contain:

- (1) a description of a material interest held by a trustee, fiduciary, or an employee who is a fiduciary with respect to the investment and management of assets of the system, or by a related person, in a material transaction with the system within the last three years or proposed to be effected;
- (2) a schedule of the rates of return, net of total investment expense, on assets of the system overall and on assets aggregated by category over the most recent one-year, three-year, five-year, and ten-year periods, to the extent available, and the rates of return on appropriate benchmarks for assets of the system overall and for each category over each period;
- (3) a schedule of the sum of total investment expense and total general administrative expense for the fiscal year expressed as a percentage of the fair value of assets of the system on the last day of the fiscal year, and an equivalent percentage for the preceding five fiscal years; and
- (4) a schedule of all assets held for investment purposes on the last day of the fiscal year aggregated and identified by issuer, borrower, lessor, or similar party to the transaction stating, if relevant, the asset's maturity date, rate of interest, par or maturity value, number of shares, costs, and fair value and identifying an asset that is in default or classified as uncollectible.

These disclosure requirements are cumulative to and do not replace other reporting requirements provided by law.

ARTICLE 3. INVESTMENT OF FUNDS

SECTION 9-16-310. State Retirement Systems Investment Panel; membership qualifications, terms, and compensation.

There is created the State Retirement Systems Investment Panel, consisting of five members, one each appointed by the Governor, State Treasurer, Comptroller General, the chairman of the Ways and Means Committee of the House of Representatives, and the chairman of the Senate Finance Committee. The member appointed by the Governor shall serve as chairman. All members appointed to the panel must possess substantial financial investment experience. No person may be appointed or continue to serve who is an elected or appointed officer or employee of the State or any of its political subdivisions, including school districts. Members shall serve for terms of two years and until their successors are appointed and qualify. Vacancies must be filled for the unexpired term in the manner of the original appointment. Members shall serve without compensation, but may receive the mileage, subsistence, and per diem authorized by law for members of state boards, commissions, and committees.

SECTION 9-16-320. Adoption of annual investment plan; quarterly review; deliberations in executive sessions; exceptions to making records public; administrative costs; duty of care; independent advisors.

(A) The panel shall meet no later than May first of each year to adopt the proposed annual investment plan for the retirement systems for the next fiscal year. The annual investment plan must be developed by the panel. No later than June first of each year, the panel shall submit the proposed plan to the board. Amendments may be made to the plan by the panel during the fiscal year with the approval of the board.

(B) The panel shall meet at least once during each fiscal year quarter for the purposes of reviewing the performance of investments, assessing compliance with the annual investment plan, and determining whether to recommend amendments to the plan to the board. The panel shall meet at such other times as are set by the panel or the chairman or requested by the board.

(C) The panel may discuss, deliberate on, and make decisions on a portion of the annual investment plan or other related financial or investment matters in executive session if disclosure thereof would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

(D) A record of the panel or of the Retirement System that discloses discussions, deliberations, or decisions on portions of the annual investment plan or other related financial or investment matters is not a public record under Section 30-4-20 to the extent and so long as its disclosure would jeopardize the ability to implement that portion of the plan or achieve investment objectives.

(E) The costs of administering the duties of the panel must be paid from the investment earnings of these systems. Administrative and clerical assistance to the panel must be provided. The board must approve all reasonable expenses of the panel in performing its duties under this section.

(F) The panel does not act as a fiduciary with respect to the funds of the retirement system, but must exercise reasonable care and skill in carrying out its duties.

(G) The panel may retain independent advisors to assist it and periodically shall provide for an outside evaluation of the investment strategy of the board.

SECTION 9-16-330. Statement of actuarial assumptions and investment objectives; components of plan; diversification; verification of investment facts.

(A) The board shall provide the panel with a statement of actuarial assumptions and general investment objectives. The board shall review the statement annually for the purpose of affirming or changing it and advise the panel of its actions.

(B) The annual investment plan must be consistent with actions taken by the board pursuant to subsection (A) and must include, but is not limited to, the following components:

- (1) general operational and investment policies;
- (2) investment objectives and performance standards;
- (3) investment strategies, which may include indexed or enhanced indexed strategies as the preferred or exclusive strategies for equity investing, and an explanation of the reasons for the selection of each strategy;
- (4) industry sector, market sector, issuer, and other allocations of assets that provide diversification in accordance with prudent investment standards, including desired rates of return and acceptable levels of risks for each asset class;
- (5) policies and procedures providing flexibility in responding to market contingencies;
- (6) procedures and policies for selecting, monitoring, compensating, and terminating investment consultants, equity investment managers, and other necessary professional service providers; and
- (7) methods for managing the costs of the investment activities.

(C) In developing the annual investment plan, the panel shall:

- (1) diversify the investments of the retirement systems, unless the panel reasonably determines that, because of special circumstances, it is clearly not prudent to do so; and
- (2) make a reasonable effort to verify facts relevant to the investment of assets of the retirement systems.

SECTION 9-16-340. Investment of retirement system assets by State Budget and Control Board; advisors; annual investment plan; required plan provisions.

(A) The State Budget and Control Board, as trustee of the retirement system, shall invest and reinvest the assets of the retirement systems as provided in Section 9-1-1310. The State Treasurer shall serve as the agent of the board with respect to investments made pursuant to Article 7, Chapter 9, Title 11. Investments allowed by law in equities may be made by the board in the manner it shall determine, consistent with Section 9-16-330 and consistent with its fiduciary duties with respect to the retirement funds. The board may employ or retain administrators, agents, consultants, or other advisors it considers necessary with respect to making equity investments. The board is subject to the provisions of Chapter 23 of Title 1, the Administrative Procedures Act, in the implementation of this article.

(B) After receiving the proposed plan of the panel, the board shall adopt an annual investment plan, which must be implemented by the board. The board shall regularly review the plan implementation and make amendments as it considers appropriate.

(C) The plan adopted must provide:

(1) the minimum and maximum portions of system assets that may be allocated to equity investments on an ongoing basis not to exceed forty percent and the minimum and maximum portions of system assets not to exceed ten percent that may be allocated to additional equity investment during the plan fiscal year. When investments in equities attain the maximum allocation allowed by this item, up to forty percent of current member and employer contributions to the retirement system may be invested in equities. If, due to growth in value of equity investments, equity investments exceed forty percent of the total assets of the retirement system, this subsection does not require the sale of equities to reduce the percentage of equities to forty percent;

(2) preference to brokerage firms domiciled in this State for conducting nondiscretionary brokerage transactions if these brokerage firms are able to meet the test of equal service and best execution in the purchase and sale of authorized investments.

SECTION 9-16-350. Use of information for self-interest; blind trusts; violations; punishment; provisions cumulative with other laws.

(A) It is unlawful for a member, employee, or agent of the panel or anyone acting on his behalf to use any information concerning panel activities to obtain any economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

(B) If a member of the panel, an employee of the panel, or a member of his immediate family holds an economic interest in a blind trust, he is not considered to have violated the provisions of subsection (A) even if the acquisition of the economic interest by the blind trust would otherwise violate the provisions of subsection (A), if the existence of the blind trust and the manner of its control is disclosed to the State Ethics Commission and the Budget and Control Board.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years and fined not more than one hundred thousand dollars.

(D) The provisions of this section are cumulative to, and not in lieu of, any other provisions of law applicable to the panel and its members in the performance of official duties including, but not limited to, Chapter 13 of Title 8.

ARTICLE 5. INVESTMENT EDUCATION

SECTION 9-16-710. Investment education services.

Notwithstanding an employee's right to obtain educational and administrative services from independent companies or vendors, or both, that offer products in the state's retirement plans, the South Carolina Retirement Systems may provide unbiased investment education services including, but not limited to, instructional videos identifying plan types, plan provisions, and plan differences to any participant in any of the state's retirement plans.

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